IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 840 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STASTE OF GUJARAT - Appellant
Versus
MOTI ENTERPRISES & 1 - Respondents

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Appearance :
MR. M.A. PATEL, LD. APP for Appellant:
NOTICE SERVED for Respondents : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 09/11/2006

ORAL JUDGMENT

1. Heard Shri. M.A. Patel, learned APP for the appellant State. Though served none appears for the respondents.

2. The State of Gujarat – Appellant herein has

preferred this appeal under Section 378 of the Criminal Procedure Code challenging the judgment & order of acquittal dated 30/8/1991 passed in Special Criminal Case No.4 of 1989 by the Special Judge, Ahmedabad, acquitting the respondents (hereinafter referred to as the original accused) for commission of offence under section 3 read with 7 and 10 of the Essential Commodities Act.

3. Brief facts leading to filing of this appeal deserves to be set out as under:

3.1 At the relevant time Inter-Se-Transaction Order, 1981 had been promulgated and it was prevailing. Under this order there was certain restrictions imposed upon the dealers of edible oil and sugar. The accused no.1 was a wholesale dealer in edible oil and the oil was being sold from the business place at Madhupura market, Ahmadabad. Accused no.2 was partner of accused no.1 firm and is said to be incharge of business and responsibility of accused no.1 firm. On 11/9/1986 prosecution witness No.3 Govindbhai Ramjibhai Bhalker who was at the relevant time Assistant Director of Civil Supplies Department, Gandhinagar, raided the shop of accused no.1 firm M/s. Moti Enterprises. Food Inspector M/s. Kiran Soni and Bhupendra Raval accompanied P.W. No.3 in raiding the said premises. The raiding party inspected the premises and the bills of the accused firm, and ascertained that for the

month of August and September 1986 the firm had transacted sale of cotton seed edible oil to wholesale dealers. It is the say of the prosecution that the said stock of cotton seed oil was purchased by accused firm in their capacity as wholesale dealer. It was also alleged by the prosecution that Moti Enterprises had purchased the said stock from another wholesale dealer and had sold the same to yet another wholesale dealer and thus committing breach of Clause (2) of the Inter-Se-Transaction Order, 1981. It was also the finding recorded by the raiding party that the accused no.1 firm had not mentioned brand name of edible oil in the bills and had not mentioned license numbers of the purchasing parties in the bills. During the investigation of the record of the accused no.1 firm it was found that Moti Enterprises had sold 75 tins of cotton seed oil to one M/s. Manibhai Shantilal, a wholesale dealer. The raiding party had seized 61 tins of cotton seed oil and seizure memo to that effect was prepared. The panchnama was drawn in presence of panch in the shop of Moti Enterprises – accused no.1.

3.2 That, accused no.2 made statement which came to be recorded by Shri. Bhalkar (P.W. No.3) which is produced on record at exhibit-30. His statement is sought to be relied upon heavily by the prosecution as well as the appellant herein. The bills for selling 75 tins cotton seed oil

were also seized by the raiding party. The bills for purchasing cotton seed oil were also seized from the party. As per the case of the prosecution when the raid was carried out in the accused no.1 firm, the accused no.2 was present in the shop and therefore, it is alleged that the accused person had committed above breach by contravening clause 18 and 24 of Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and had also contravened Clause 5 and 9 of the License issued to the accused firm under the said order. It is pertinent to note that license is issued under Section 3 of the Essential Commodities Act and thus the accused had contravened provisions of Section 3 of the said Act which has been punishable under sections 7 and 10 of the Essential Commodities Act.

4. After recording plea of denial on the part of the accused the trial had commenced. The case of the prosecution was put to the accused and further statement of the accused came to be recorded under section 313 of the Code. The accused denied the entire case. The accused submitted written statement at exhibit-55 wherein it was stated that the prosecution has deliberately not examined Dalwadi, Dharamsibhai Jadav of M/s. Manubhai Shantilal of Viramgam and if above witnesses were examined, then some light would have been thrown on the question

that the transaction with regard to bills exhibit no. 32 to 34 were not issued by accused no.2. It was stated that the burden was on the prosecution to prove as to who was responsible for day to day administration of the business of accused no.1 firm. It was further stated that accused no.2 was unaware of issuance of bills. Accused no.2 was not said to be responsible for day to day affairs of the firm. It was stated that bills at exhibit-32 to 34 were not issued by accused no.2 and a plea was taken that accused no.2 was managing partner of one firm called Mahesh Enterprises which is dealing in sugar and allied products which is having its shop at New Madhupura Market. It is stated in the written statement at exhibit-55 that when the raid was carried out by Civil Supplies department accused no.2 was not present in the shop of M/s. Moti Enterprises. It was also stated that when the raid was carried out the accused no.2 was attending shop at Mahesh Enterprise and he was called at the shop of accused no.1 by telephonic message. The signature of accused no.2 was taken on the statement by giving threat that he will be detained and put behind the bars. As per the entries at exhibit-50 and 51 in the stock register, he had purchased 254 cotton oil tins from the manufacturers and accused no.1 firm sold the cotton seed oil tins to M/s Manubhai Shantilal of Viramgam, out of the stock

purchased from Chunilal Danji & Company, who is also a commission agent. Copy of partnership deed of M/s. Mahesh Enterprises and xerox copy of the license issued to Chunilal Danji & Company as Commission Agent is produced on record along with the written statement by the accused no.2.

5. The trial court after recording further statement of the accused under section 313 of the Code have analyzed the evidence on record and came to the conclusion that the prosecution has failed in proving the charge levelled against the accused and no conviction could be recorded on the basis of the evidence. The accused were therefore acquitted vide impugned judgment and order dated 30/8/1991 passed in Special Criminal Case No. 4 of 1989, which is subject matter of challenge in the present appeal.

6. Shri. Patel, learned APP appearing for the appellant State has vehemently urged that the trial court has patently erred in appreciating the evidence on record and therefore the order impugned deserves to be quashed and set aside. Shri. Patel has submitted that in absence of any cogent evidence with regard to the statement of the accused at exhibit-30 same could not have been recorded to be taken under threat or

coercion. Shri. Patel has submitted that the accused had liberty to lead evidence in respect of the statement at exhibit-30. Shri. Patel has also relied upon section 10(c) of Essential Commodities Act, 1955. In support of his submission he submitted that the court is duty bound to draw presumption of culpable mental state and therefore it was bounden duty cast upon the accused to lead evidence in support of his case of coercion. Shri. Patel has submitted that the judgment & order impugned in the present appeal deserves to be quashed and set aside even on the ground that the trial court has not appreciated the evidence on record.

7. This Court is unable to accept this submission of Shri. Patel. This being an acquittal appeal, even if a different view is possible then also the same should not be taken unless & until it is aptly demonstrated by the appellant that sustaining the order of acquittal would result into miscarriage of justice and that recording of acquittal is based upon patently perverse finding. In absence of any such plea the order of acquittal is not required to be disturbed.

8. The prosecution has not established beyond reasonable doubt that the accused no.2 was in fact incharge of the business of accused no.1 firm. Clause (2) of Inter-Se-Transaction Order

1981 deserves to be considered for appreciating the case of the prosecution. The trial court has appreciated this fact in its true perspective. The clause (2) itself is very clear that no wholesaler holding license in respect of sugar or edible oil shall sell the commodity in respect of which the wholesaler holds license to any other person except a retailer (including himself if he is a retailer) or bulk consumer. This prohibition is however regularised by providing that a wholesale may sell the stock of sugar or edible oil in respect of which he holds license; (a) if it is purchased by him in his capacity as broker, commission agent or any other agent having authority to sale on behalf of his principal; or (b) imported by him from outside the State; or (c) purchased by him from any producer to another wholesaler. This being an exception it was mandatory duty cast upon the prosecution to prove that the case of the accused did not fall any one of the said exceptions. Relying upon the statement which is termed to be an extra judicial confession the prosecution has attempted to establish the offence on the accused. It is pertinent to note that for relying upon said statement it ought to have been proved beyond doubt by the prosecution that the same was obtained of free volition of the accused and it was not obtained under any threat or coercion. Looking to the record & evidence, it can not be said that the

prosecution has established beyond reasonable doubt that the statement of accused no.2 was of his own volition. On the contrary the trial court has rightly not believed said statement by accused no.2 of his own volition. The panch witness had also not supported the case of the prosecution.

9. In view of the aforesaid facts & circumstances of the case, this Court is of the considered view that the judgment and order of acquittal impugned in the present appeal does not call for any interference and therefore, the appeal fails and the same deserves to be dismissed. Accordingly it is dismissed.

[S.R. BRAHMBHATT, J]

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